

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 18, 2008

STATE OF TENNESSEE v. ANTHONY S. CALDWELL

Direct Appeal from the Criminal Court for Knox County
No. 81681 Mary Beth Leibowitz, Judge

No. E2008-01031-CCA-R3-CD - Filed July 29, 2009

Defendant, Anthony S. Caldwell, appeals the trial court's dismissal of his Motion for Amended Judgment and/or Motion for Reduction of Sentence in which Defendant sought a modification of his pre-trial jail credits. After review, we affirm the judgment of the trial court, but remand for the entry of corrected judgments consistent with this opinion in counts 3 through 7.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed;
Remanded for Entry of Corrected Judgments**

THOMAS T. WOODALL, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ROBERT W. WEDEMEYER, JJ., joined.

Anthony S. Caldwell, *Pro Se*.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; and Randall E. Nichols, District Attorney General, for the Appellee, State of Tennessee.

OPINION

On December 5, 2007, Defendant entered pleas of guilty in Knox County case no. 81681 to one count of vehicular homicide, a Class C felony, and five counts of reckless aggravated assault, a Class D felony. The trial court sentenced Defendant as a Range II, multiple offender, to concurrent sentences of eight years for his Class C felony and six years for each Class D felony, for an effective sentence of eight years. The trial court ordered Defendant to serve his sentence in case no. 81681 concurrently to his sentences in Jefferson County case no. 8344 and in Hamblen County case no. 04-CR-339, both unrelated cases. The trial court ordered pre-trial jail credits in case no. 81681 from February 21, 2007, to December 5, 2007.

On April 2, 2008, Defendant filed a motion for amended judgment and/or motion for reduction of sentence pursuant to Rule 35 of the Tennessee Rules of Criminal Procedure. In his motion, Defendant sought pre-trial jail credits for his sentence in case no. 81681 for the period from

April 6, 2005, to February 21, 2007. He alleged that he was in the Hamblen County Jail from April 6, 2005, until an unspecified day in January 2006, when he “was sent to prison.” Defendant argued that because the trial court ordered his sentence in Knox County case no. 81681 to run concurrently to his sentence in Hamblen County case no. 04-CR-339, he is entitled to pre-trial jail credits from both cases to be applied to his effective sentence of eight years in case no. 81681. The trial court dismissed Defendant’s motion, noting that the pre-trial jail credits awarded in Knox County case no. 81681 were correct.

On appeal, the State argues that the trial court was without jurisdiction to rule on Defendant’s motion. Alternatively, the State contends that Defendant is not entitled to a modification of the pre-trial jail credits in case no. 81681.

Rule 35 of the Tennessee Rules of Criminal Procedure provides:

(a) Timing of Motion. The trial court may reduce a sentence upon motion filed within 120 days after the date the sentence is imposed or probation is revoked. No extensions shall be allowed on the time limitation. No other actions toll the running of this time limitation.

(b) Limits of Sentence Modification. The court may reduce a sentence only to one the court could have originally imposed.

(c) Hearing Unnecessary. The trial court may deny a motion for reduction of sentence under this rule without a hearing.

Tenn. R. Crim. P. 35(a)-(c).

Defendant filed his motion for relief under Rule 35 within the time limit specified. However, the remedy Defendant is seeking, the award of jail credits, does not fall within the parameters of Rule 35. Although the grant of additional jail credits may shorten the time a defendant spends in confinement, the grant does not serve to reduce the length of a defendant’s sentence.

Having said that, however, we also agree with the State that Defendant is not entitled to any further pre-trial jail credits in Knox County case no. 81681. In case no. 81681, the trial court applied pre-trial jail credits for the period beginning February 21, 2007, until December 5, 2007, when Defendant’s judgments of conviction were entered for this case.

The charging instrument in Knox County case no. 81681 is a presentment returned by the Knox County Grand Jury on April 12, 2005. The offenses occurred on July 18, 2004. Defendant was not arraigned on the charges in Knox County case no. 81681 until February 23, 2007, two days after his pre-trial jail credits began in case no. 81681.

Based upon Defendant's motion, he pled guilty to the Hamblen County offense(s) in January 2006 and "was sent to prison." At least as of that point in time, there would be no right to accumulate statutorily mandated pretrial jail credit in Knox County case no. 81681 because he definitely was not being held in case no. 81681, but instead was serving a sentence imposed by the trial court in Hamblen County.

The logical inference to be made from the record available on appeal is that Defendant was not served with a mittimus issued as a result of the charges in Knox County case no. 81681 until February 21, 2007, and was arraigned two days later. The plea agreement in Knox County case no. 81681 states that the effective eight-year sentence was to be served "concurrent in so far as possible with Hamblen Co. 04-CR-339 [and] and Jefferson Co. 8344."

Based on this sparse record, we must conclude that the agreement was for the Hamblen County sentence (which began in January 2006 with its own statutorily mandated pretrial jail credit) to be served concurrently with Knox County case no. 81681 (which began December 5, 2007, with its own statutorily mandated pretrial jail credit) to the extent service of the unexpired portion of the Hamblen County sentence overlapped with service of the effective eight-year sentence in Knox County case no. 81681.

Accordingly, we conclude that the trial court did not err in dismissing Defendant's motion for reduction of sentence. Defendant is not entitled to relief on this issue.

We note that Defendant was convicted of vehicular homicide by recklessness in count 2 of the indictment. The judgment form notes that Defendant is awarded pretrial jail credits against this sentence for the period from February 21, 2007, until December 5, 2007. The judgment forms for Defendant's convictions in counts 3, 4, 5, 6, and 7, note that these sentences are to be served concurrently with count 2 but do not reflect the grant of any pretrial jail credits. Pretrial jail credit for the period from February 21, 2007, until December 5, 2007, should be reflected on each judgment form for Defendant's convictions in counts 3 through 7 of the presentment. See State v. Henry, 946 S.W.3d 833, 835 (Tenn. Crim. App. 1997) (noting that "[t]o allow pretrial jail credit in only one case would contravene the concurrent sentence and effectively require [the defendant] to serve a longer sentence on the second charge").

CONCLUSION

After review, we affirm the judgment of the trial court dismissing Defendant's motion. We remand, however, for the entry of corrected judgments in counts 3 through 7 to reflect the grant of pretrial jail credit from February 21, 2007, until December 5, 2007.

THOMAS T. WOODALL, JUDGE